

000587

REQUEST FOR COUNCIL ACTION  
CITY OF SAN DIEGO1. CERTIFICATE NUMBER  
(FOR AUDITOR'S USE ONLY)

2800023

TO: CITY ATTORNEY

2. FROM (ORIGINATING DEPARTMENT):  
CITY ATTORNEY3. DATE:  
07/11/2007

## 4. SUBJECT:

Authorizing continued retention, payment for invoices and future reserve funding for Latham & Watkins, LLP for services in *Otay Acquisition v. City*, SDSC Case No. GIC 753247; *National Enterprises v. City*, SDSC Case No. GIC 730011; *Border Business Park, Inc. v. City*, SDSC Case No. GIC 692794; and related matters

5. PRIMARY CONTACT (NAME, PHONE, &amp; MAIL STA.)

Don McGrath x 35860

6. SECONDARY CONTACT (NAME, PHONE, &amp; MAIL STA.)

Todd Bradley x 36173

7. CHECK BOX IF REPORT TO COUNCIL IS ATTACHED



## 8. COMPLETE FOR ACCOUNTING PURPOSES

FUND	81140				9. ADDITIONAL INFORMATION / ESTIMATED COST:
DEPT.	81140				
ORGANIZATION	3501				
OBJECT ACCOUNT	4141				
JOB ORDER	081141				
C.I.P. NUMBER					
AMOUNT	\$1,245,000.00				

## 10. ROUTING AND APPROVALS

ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
1	ORIG. DEPT	<i>[Signature]</i>	7/12/07	8	DEPUTY CHIEF		
2	RISK MGT.	<i>[Signature]</i>	7-12-07	9	COO/CEO	<i>[Signature]</i>	7/12/07
3				10	CITY ATTORNEY	<i>[Signature]</i>	7/12/07
4	AUDITOR	<i>[Signature]</i>	7/12/07	11	ORIG. DEPT	<i>[Signature]</i>	7/12/07
5					DOCKET COORD:	COUNCIL LIAISON	
6					COUNCIL PRESIDENT	<input type="checkbox"/> SPOB <input type="checkbox"/> CONSENT <input checked="" type="checkbox"/> ADOPTION	
7					<i>[Signature]</i>	<input type="checkbox"/> REFER TO:	COUNCIL DATE: 7/30/07

11. PREPARATION OF:

☒ RESOLUTIONS☐ ORDINANCE(S)☐ AGREEMENT(S)☐ DEED(S)

1. Authorizing \$1,245,000.00 for continued retention, payment for invoices and future reserve funding for legal services by outside counsel Latham & Watkins, LLP to represent the City of San Diego in *Otay Acquisition v. City*, SDSC Case No. GIC 753247; *National Enterprises v. City*, SDSC Case No. GIC 730011; *Border Business Park, Inc. v. City*, SDSC Case No. GIC 692794; and related matters.

2. Authorizing the City Auditor and Comptroller to expend \$1,245,000 from the Public Liability Fund to pay the above expenditures.

## 11A. STAFF RECOMMENDATIONS:

Adopt the resolution and authorize the Auditor to appropriate and issue an Auditor's Certificate to fund this obligation.

## 12. SPECIAL CONDITIONS (REFER TO A.R. 3.20 FOR INFORMATION ON COMPLETING THIS SECTION.)

COUNCIL DISTRICT(S): All

COMMUNITY AREA(S): Not applicable

ENVIRONMENTAL IMPACT: This action is not a "project" for purposes of CEQA

HOUSING IMPACT: Not applicable

OTHER ISSUES: Clerk requested to provide Executive Assistant City Attorney Don McGrath (11<sup>th</sup> Floor, CCP, 533-5860) with a certified copy of the resolution.

000589

**EXECUTIVE SUMMARY SHEET**  
CITY OF SAN DIEGO

DATE ISSUED: July 11, 2007 REPORT NO:  
ATTENTION: Mayor and City Council members  
ORIGINATING DEPARTMENT: City Attorney  
SUBJECT: Authorizing continued retention, payment for invoices and future reserve funding for Latham & Watkins, LLP in *Otay Acquisition v. City*, SDSC Case No. GIC 753247; *National Enterprises v. City*, SDSC Case No. GIC 730011; *Border Business Park, Inc. v. City*, SDSC Case No. GIC 692794; and related matters [De La Fuente cases]  
COUNCIL DISTRICT(S): Not applicable  
CONTACT/PHONE NUMBER: Don McGrath, 533-5860 or Todd Bradley, 533-3173

REQUESTED ACTION: Approve continued retention, payment for invoices and future reserve funding for Latham & Watkins, LLP, in De La Fuente cases

STAFF RECOMMENDATION: Adopt the resolution and authorize the Auditor to appropriate and issue an Auditor's Certificate to fund this obligation.

EXECUTIVE SUMMARY:

**De La Fuente Cases:**

- #1 (*Border Business Park v. City of San Diego*, S.D. Superior Court Case No. GIC692794);
- #2 (*National Enterprises, Inc. v. City of San Diego*, S.D. Superior Court Case No. GIC730011);
- #3 (*Otay Acquisitions LLC v. City of San Diego*, S.D. Superior Court Case No. GIC753247)

After the successful appeal in *Border*, these three De La Fuente cases are pending in San Diego Superior Court. Latham & Watkins has filed demurrers and motions to strike the *Otay* and *National* cases. The next step will be to file motions for summary judgment or summary adjudication in all three matters. If the City does not prevail, discovery and pretrial preparation will begin. Sixty percent of the fees are currently being reimbursed by an insurance carrier.

In closed session on July 10, 2007, the Council was informed of the status of the case and the legal fees pending. The Council was informed of the need for additional funding.

Outstanding Invoices Currently Due: \$ 140,000.00 - Latham & Watkins

Request for Future Reserve: \$ 500,000.00 - Latham & Watkins

The total amount requested for these three cases in this resolution is thus \$640,000 for Latham & Watkins.

**De La Fuente Cases (Insurance Coverage Issues):**

**#4 (*Insurance Co. of the State of Pennsylvania, et al. v. City of San Diego, United States District Court Case No. 02CV0693*)**

This case involves a defense of AIG's insurance coverage litigation seeking to avoid defense and indemnity coverage for the De La Fuente cases. AIG has appealed (for the second time) the order requiring AIG to pay the City's defense costs in the cases. The City has moved to dismiss that appeal but may need to brief the appeal for the Ninth Circuit Court of Appeal. In addition, AIG has moved for summary judgment or partial summary judgment on a number of issues in federal court and the City is defending those motions. The City seeks to recover all of the City's attorneys' fees and costs in the matter as damages in a separate bad faith case.

In closed session on July 10, 2007, the Council was informed of the status of the case and the legal fees pending. The Council was informed of the need for additional funding.

Outstanding Invoices Currently Due:                 \$ 105,000.00 – Latham & Watkins

Request for Future Reserve:                         \$ 500,000.00 – Latham & Watkins

The total amount requested for these three cases in this resolution is thus \$605,000 for Latham & Watkins.

FISCAL CONSIDERATIONS: Authorize an additional \$1,245,000 to defend the City of San Diego in the four *De La Fuente* matters listed above.

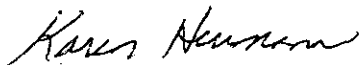
With this action, the Council will authorize the Auditor and Comptroller to appropriate \$1,245,000.00 from the Public Liability Fund to meet this obligation.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

The Council has been informed in Closed Session of the invoices due and the requests for future reserves detailed above.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: Not applicable

KEY STAKEHOLDERS AND PROJECTED IMPACTS: Latham & Watkins



Assistant City Attorney

000591

The City of San Diego  
**CERTIFICATE OF CITY AUDITOR AND COMPTROLLER**

**CERTIFICATE OF UNALLOTTED BALANCE**

AC 2800023

ORIGINATING

DEPT. NO.:

45

I HEREBY CERTIFY that the money required for the allotment of funds for the purpose set forth in the foregoing resolution is available in the Treasury, or is anticipated to come into the Treasury, and is otherwise unallotted.

Amount: \_\_\_\_\_ Fund: \_\_\_\_\_

Purpose: \_\_\_\_\_

Date: \_\_\_\_\_ By: \_\_\_\_\_

AUDITOR AND COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA										
ACCTG. LINE	CY PY	FUND	DEPT	ORG.	ACCOUNT	JOB ORDER	OPERATION ACCOUNT	BENF/ EQUIP	FACILITY	AMOUNT
TOTAL AMOUNT										

FUND OVERRIDE ☐

**CERTIFICATION OF UNENCUMBERED BALANCE**

I HEREBY CERTIFY that the indebtedness and obligation to be incurred by the contract or agreement authorized by the hereto attached resolution, can be incurred without the violation of any of the provisions of the Charter of the City of San Diego; and I do hereby further certify, in conformity with the requirements of the Charter of the City of San Diego, that sufficient moneys have been appropriated for the purpose of said contract, that sufficient moneys to meet the obligations of said contract are actually in the Treasury, or are anticipated to come into the Treasury, to the credit of the appropriation from which the same are to be drawn, and that the said money now actually in the Treasury, together with the moneys anticipated to come into the Treasury, to the credit of said appropriation, are otherwise unencumbered.

Not to Exceed: \$1,245,000.00

Vendor: Latham & Watkins LLP

Purpose: Authorization for continued retention, pmt for invoices & future reserve funding for outside legal counsel to represent the City of San Diego in Otay Acquisition v. City, National Enterprises v. City, and Border Bus. Park v. City. Authorizes the City Auditor & Comptroller to expend monies from the Public Liability Fund for said services.

Date: July 12, 2007 By: *Donna Walbert* 7/12/07

AUDITOR AND COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA										
ACCTG. LINE	CY PY	FUND	DEPT	ORG.	ACCOUNT	JOB ORDER	OPERATION ACCOUNT	BENF/ EQUIP	FACILITY	AMOUNT
001	0	81140	81140	3501	4141	81141				\$1,245,000.00
TOTAL AMOUNT										\$1,245,000.00

AC-361 (REV 2-92)

FUND OVERRIDE ☐

AC 2800023

RESOLUTION NUMBER R-\_\_\_\_\_

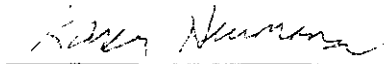
DATE OF FINAL PASSAGE \_\_\_\_\_

BE IT RESOLVED, by the Council of the City of San Diego, that the City Attorney is authorized to continue the retention of Latham & Watkins, LLP, for an additional amount not to exceed \$1,245,000, to provide legal services in *Otay Acquisition v. City*, SDSC Case No. GIC 753247; *National Enterprises v. City*, SDSC Case No. GIC 730011; *Border Business Park, Inc. v. City*, SDSC Case No. GIC 692794; and *Insurance Co. of the State of Pennsylvania, et al. v. City of San Diego*, USDC Case No. 02 CV 0693.

BE IT FURTHER RESOLVED, that the City Auditor and Comptroller is authorized to expend an amount not to exceed \$1,245,000 from the Public Liability Fund, solely, and exclusively for the purpose of providing funds for the above described legal services, contingent upon the City Auditor and Comptroller first furnishing one or more certificates demonstrating that the funds necessary for expenditures are, or will be, on deposit in the City Treasury.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By



Karen A. Heumann  
Assistant City Attorney

KAH:als  
07/12/07  
Or.Dept:City Atty.  
Aud.Cert:2800023

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of \_\_\_\_\_.

ELIZABETH S. MALAND  
City Clerk

By \_\_\_\_\_  
Deputy City Clerk

Approved: \_\_\_\_\_  
(date)

\_\_\_\_\_  
JERRY SANDERS, Mayor

Vetoed: \_\_\_\_\_  
(date)

\_\_\_\_\_  
JERRY SANDERS, Mayor